U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC 98 256 50262 Office: VERMONT SERVICE CENTER Date: AUG 2 1 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner, a consulting structural engineering and architecture firm, seeks to employ the beneficiary as a senior structural engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The beneficiary holds an M.S. and a Ph.D. degree in Structural Engineering from [redacted] and thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the

United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Counsel asserts that the beneficiary "has been recognized for achievements and significant contributions by his peers and others familiar with his work, both as a student and as an engineer."

[redacted] Vice President and Managing Director at the petitioning entity, discusses the beneficiary's work:

> [The beneficiary] has been working with IKW since May, 1997 as a Senior Structural Engineer. I was personally involved in hiring [the beneficiary] in large part due to his excellent education and specialized experience in the area of Structural Dynamics and his 5 years of experience in India during which he designed several towers and its foundations for projects in Asia and Middle East. His responsibilities include inspection, analysis and retrofit design of bridges; rehabilitation and restoration design of structures; study/analysis of construction engineering related problems, design of temporary support systems. [The beneficiary's] performance has been impressive to date and his technical competency has lent itself well to the diverse assignments we have. He has emerged as a solid resource for the firm and he will be integral to our continued success and prosperity given the value added knowledge he has and his strong work ethic.

[redacted] MRR, who served on the beneficiary's doctoral review board, states that the beneficiary "has the depth of understanding of the field of structural engineering and in particular with respect to that relevant to the renewal and renovation of infrastructure which is most needed in the U.S. at this time." [redacted] Professor of Mechanical and Aerospace Engineering at the [redacted] of [redacted] who studied with the beneficiary as an undergraduate at [redacted] states:

Since graduating from [redacted] [the beneficiary] has been working with [redacted] an excellent [redacted] firm based in New York City. The focus of his current efforts is on structural integrity evaluation (assessing the safety of existing structures under existing and proposed or expected future loads) and rehabilitation/renewal of US infrastructure. In last one year at [redacted] he has been involved in the design and analysis of diverse civil engineering structures related to communication systems, transmission lines towers and bridges (for [redacted] Group, [redacted] Department of Transportation), among others.

[redacted] Department of Civil Engineering, [redacted] states that "[I]t is my professional opinion that [the beneficiary's] work in the field of bridge aerodynamics is exceptional and is likely to have substantial impact on professional engineering practice related to long-span bridge design." [redacted] Homewood Professor, Department of Civil Engineering, [redacted] attests that the beneficiary "is, in my opinion, well suited to join the American scene as an unusually well qualified and contributing professional."

The above witnesses are complimentary of the beneficiary's skills, asserting their complete confidence in the beneficiary's professional competence, but do not indicate that the beneficiary's services are of significantly greater benefit to the national interest than those of fully qualified U.S. workers. The initial submission gave no indication that the beneficiary's work on the project with which he is involved is seen as important outside of IKW.

Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Structural dynamics, including bridge design and repair is central to the infrastructure of a postindustrial economy such as that of the United States, and clearly this field meets the threshold of substantial intrinsic merit. The issue now becomes one of whether the work of this particular beneficiary (as opposed to the work of the petitioning entity) can be expected to have national implications, and whether the benefits arising from this beneficiary's work significantly exceed those that could be expected from a fully qualified U.S. worker.

Counsel has stated that the beneficiary has already gained recognition for his work, but the record contains no indication that the beneficiary's work has been recognized as significant except by his colleagues at [redacted]

Counsel asserts that the witness letters have been written by "pre-eminent civil engineers, from both the academic and industrial spheres." Counsel further argues that:

> The Service dismisses these experts as "various individuals" and completely ignores the fact that every one who provided a letter in support of this petition is a leader in his field. Their preeminence is obvious from the biographical information provided for each of them. The academics are full professors at distinguished universities, two hold endowed chairs. The non-academics are principals in major engineering firms. All are leaders of professional organizations.

Counsel argues that workers such as the beneficiary "are extremely rare." Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification. See Matter of New York State Dept. of Transportation, supra. The Department of Labor, and not the Service, is charged with the responsibility of determining where local labor shortages exist. Because the burden of proof remains on the petitioner throughout these proceedings, a petitioner's claims regarding a local labor shortage should be tested and confirmed via the existing labor certification process.

Because, by statute, "exceptional ability" is not by itself sufficient cause for a national interest waiver, the benefit which the alien presents to the field must significantly exceed the substantial prospective benefit contemplated in the regulations. This standard must apply whether the alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree. The statute and regulations contain no provision allowing a lower national interest threshold for advanced degree professionals than for aliens of exceptional ability. To hold otherwise is to present so low a national interest threshold for advanced degree professionals that the job offer/labor certification requirement becomes meaningless; such a result is clearly contrary to Congressional intent. In drafting the statute,

Congress could easily have removed the job offer/labor certification requirement altogether, but that provision was left in place. The petitioner's apparent reluctance to comply with the job offer/labor certification requirement does not represent a national interest issue.

Several witnesses have asserted that the beneficiary is a key member of the various projects with which he is involved. It has not been made clear, however, what contributions the beneficiary has made which could not presumably have been made by a fully qualified U.S. worker in the same position. The petitioner, having argued that the national interest would be best served by not offering the position in question to a U.S. worker, must now establish this proposition through evidence and compelling argument, rather than simply listing the beneficiary's duties and asserting that, as a result of those duties, the beneficiary serves the national interest.

The petitioner has not shown that the benefits from the beneficiary's work, which are unique to the beneficiary rather than intrinsic to the job being performed, are or will be so significant at a national level that the intending employer should be exempt from the job offer/labor certification requirement which normally attaches to the visa classification sought. Because the petitioner has requested a benefit above and beyond the underlying visa classification, the petitioner must be subject to a greater standard of evidence concomitant with the greater benefit sought.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the decision of the director denying the petition will not be disturbed.

ORDER: The appeal is dismissed.